

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPELLANTS: TESSMER, MICHAEL J., ET AL. DOCKET NO.: 5035.143

SERIAL NO.: 10/671,893

EXAMINER: MOHANDESI, JILA M.

FILED: 09/26/2003

ART UNIT: 3728

CONFIRMATION NO.: 8000

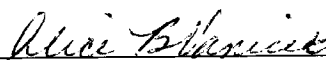
TITLE: PRESSURIZED WATER-SOLUBLE POUCH

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Quarles & Brady Streich Lang LLP
One South Church Avenue, Suite 1700
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CERTIFICATE OF TRANSMISSION

I hereby certify that on this 12th day of December, 2006, this correspondence is being transmitted via EFS-WEB to the U.S. Patent and Trademark Office, Patent Technology Center 3700, Art Unit 3728.



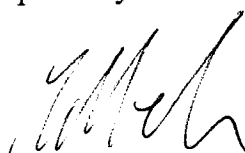
Alice B. Vanicek

TRANSMITTAL OF REPLY BRIEF

Dear Sir:

Pursuant to the provisions of 37 C.F.R. 41.41, the appellant is hereby submitting a Reply Brief to the Examiner's Answer in the above-captioned patent application.

Respectfully submitted,


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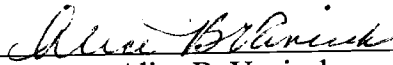
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Alice B. Vanicek

TO THE COMMISSIONER FOR PATENTS

REPLY BRIEF

Dear Sir:

This is in reply to the Examiner's Answer dated 02 November 2006.

A. In the first full paragraph on page 4 of the Examiner's Answer, the Examiner states the following:

“Furthermore depending on where the package is made and where it is shipped to and used (i.e. package made in Holland and shipped and used in Denver (USA) will effect the ambient pressure of the air bubble within the claim parameters.”

The appellants respectfully draw the Board's attention to the fact that the Examiner has provided no calculations or other evidence to support the allegation that the ambient pressure of the air bubble will lie within the claim parameters.

B. In the second full paragraph on page 4 of the Examiner's Answer, the Examiner makes the following statement:

“In response to appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.”

The appellants presume that the Examiner is referring to the second and third full paragraphs on page 4 of the appellants' Brief. However, the appellants note that they are not arguing against the references individually. Rather, the appellants are summarizing the teachings of the references to facilitate an understanding of the references by the Board.

C. In the third full paragraph on page 4 of the Examiner's Answer, the Examiner states the following:

"In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper."

While the appellants have no quarrel with this statement, the other side of the coin is that the Examiner must take into account those teachings of the prior art which lead away from the appellants' invention. Such teachings are present here as outlined in the appellants' Brief.

D. In the paragraph bridging pages 4 and 5 of the Examiner's Answer, the Examiner makes the following statement:

"In response to appellant's argument that the appellants pressurize for at least one reason not disclosed by the prior art, therefore the appellants pressure of 1-2 psig cannot be obvious because one of ordinary skill is unaware of why the appellants are pressurizing, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious."

The appellants disagree that the advantage outlined in the appellants' Brief flows naturally from the prior art inasmuch as there are significant pressure ranges where such advantage will not be

achieved. There cannot be a natural flow of an advantage when there are a significant number of possibilities where the advantage is not obtained.

E. In the second full paragraph on page 5 of the Examiner's Answer, the Examiner states the following:

“In response to appellant's argument that the above references are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the above references are both directed to a container for packaging and holding a product.”

While the appellants have argued that the references cannot be combined, the appellants do not find an argument in their Brief relating to nonanalogous art. Analogous references may not be combinable as is the case here.

In view of the foregoing, it is once again respectfully requested that the rejection of the claims be reversed in its entirety.

Respectfully submitted,



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